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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,026	12/29/2000	Gary E. Sullivan	257/127	8705

30408 7590 09/23/2005

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EXAMINER

LE, DEBBIE M

ART UNIT	PAPER NUMBER
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2167

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,026

Applicant(s)

SULLIVAN ET AL.

Examiner

DEBBIE M. LE

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/9/05 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raise a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basic of statutory subject matter under 35 U.S.C. 101.

To expedite a complete examination of the instant application the claims rejected under 35 U.S.C 101 (nonstatutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four categories.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peng (US Patent 6,738,766 B2) in view of Howe et al (US Patent 6,917,958 B1).

As per claim 1, Peng discloses a system for storing and retrieving data (col. 2, lines 32-48), comprising:

an identifier including three or more variables for identifying each data stored in said system, wherein one of said at least three or more variables is a location variables (Figs. 2b, 3a-b, col. 4, lines 64, col. 5, lines 1-7).

Peng does not explicitly teach a physical location. However, Howe teaches at a physical location variable (as a value is in a system registry "C:\test.ini) (col. 10, lines 54-60). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references to identify a variables is a physical location as disclosed by Howe because it would speed up a searching process of Peng's system if a user provides a physical location to identify, for example, where a file resides at.

As per claims 2, Peng teaches wherein one of said three or more variables is a device identification variable, a timestamp for prioritizing said data, wherein one of said variables may be filled by a wildcard, wherein said system includes a registry for storing said data, wherein said registry is provided in a database structure (Fig. 8, Fig. 3b, col. 5, lines 1-3, 48-65).

As per claims 7-10, Peng teaches wherein said three or more variables includes a device identification variable, an application identification variable and a user identification variable, a timestamp for prioritizing data, wherein one of said variables may be filled by a wildcard, wherein said system includes a registry and said registry includes a database structure for storing said data (Fig. 8, Fig. 3b, col. 5, lines 1-3, 48-65).

Claims 11 and 14 are rejected by the same rationale as state in independent claim 1 arguments.

As per claims 12-13, Peng teaches a means for providing a floating value to said at least three variables, a means for associating a time stamp to said data. (col. 5, lines 1-3).

Claims 16-18, 20-21 have similar limitations as claims 2-10; therefore, they are rejected under the same subject matter.

As per claim 19, Peng teaches deleting one or more data items that has been superseded by a subsequent data having same identifier but a higher time stamp value (Fig. 8, # 810).

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been fully considered but are moot in view of the new ground(s) of the rejection.

Peng and the newly cited Howe references, as combined, teaches each and every limitation of the claims. Claims 1-21 are therefore rejected.

Applicants' arguments filed on 5/6/05, page 2, argued that the invention specification and drawings which lists examples of physical locations such as home, living room, kitchen, etc.

In response, it is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. As passages from the Applicants argued "the invention specification and drawings which

lists examples of physical locations such as home, living room, kitchen, etc can be found throughout the specification as filed", they were not claimed explicitly. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Miro-Devices Inc.*, 7 USPQ2d 1064. As a result, a newly cited reference Howe does disclose a limitation "physical location", as broadly claimed by the Applicants.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M. LE whose telephone number is (571) 272-4111. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'DEBBIE M LE', written over a horizontal line.

DEBBIE M LE
Examiner
Art Unit 2167

Debbie Le

Sept. 15, 2005.